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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,475

12/28/2000

Lynh Nguyen

STL919990134US3/A8644

7832

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7590

07/20/2011

SUGHRUE MION PLLC

USPTO CUSTOMER NO WITH IBM/SVL

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EXAMINER

CHANKONG, DOHM

ART UNIT

PAPER NUMBER

2452

MAIL DATE

DELIVERY MODE

07/20/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/750,475	<b>Applicant(s)</b> NGUYEN, LYNH	
	<b>Examiner</b> DOHM CHANKONG	<b>Art Unit</b> 2452	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/2011</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This non-final rejection is in response to Applicant's request for continued examination. Applicant amends claims 1, 8, and 15 and cancels claim 23. Accordingly, Applicant presents claims 1-22 and 24 for further examination.

#### **I. CONTINUED EXAMINATION UNDER 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/4/2011 has been entered.

#### **II. RESPONSE TO ARGUMENTS**

Applicant's arguments with respect to claims 1-22 and 24 have been considered but are moot in view of the new ground(s) of rejection.

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### III. CLAIM REJECTIONS – 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- A. Claims 1-22 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

#### **Claims 1, 8, and 15**

Claim 1 recites "detecting unavailability of the data source in response to an initial request for the data source by the remote application" and "dynamically detecting availability of the data source in response to a subsequent request for the data source." These two limitations conflict with the new limitations which recite that a port module "detects the unavailability of the data source" and "detects the availability of the data source in response to the subsequent request for the data source."

The limitations are conflicting because there is confusing antecedent basis. It is not clear if there are four different detecting steps or if the port module is performing the steps of the original limitation. If the former, then the claim should be amended to clearly differentiate between the steps. If the latter, then the new limitations should more clearly reflect the detecting steps in the new claim language are the same as the detecting steps in the old claim language (i.e., proper antecedent basis).

The limitation "bypassing the connection manager in the subsequent request" is also confusing because it is not clear whether the subsequent request or the port module is bypassing the connection manager. This language should be clarified to more clearly define what element is bypassing the connection manager and when.

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Claims 8 and 15 are rejected for similar reasons.

**Claims 2, 4, 9, 11, and 16**

These claims are confusing because they repeat the same subject matter found in the new limitations of their respective parent claims and therefore fails to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

**Claims 3, 5, 10, 12, and 17**

These claims are confusing because they conflict with the subject matter found in the new claim language of their respective parent claims. The new limitations recite that the port module performs the detecting steps whereas these claims state that the connection manager performs the steps. It is not clear if Applicant intends for both elements to perform the same steps. Appropriate clarification is required.

**IV. CLAIM REJECTIONS - 35 U.S.C. § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**A. Claims 8-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

**Claims 8-14 and 21**

Claims 8-14 and 21 recite a computer readable medium. Because Applicant's specification does not provide a definition for the term, the term is given its broadest reasonable interpretation consistent with the specification.

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The broadest reasonable interpretation of “computer readable medium” typically covers forms of non-transitory tangible media and transitory propagating signals *per se*. *See* Kappos Memo on Subject Matter Eligibility of Computer Readable Media (available at: [http://www.uspto.gov/patents/law/notices/101\\_crm\\_20100127.pdf](http://www.uspto.gov/patents/law/notices/101_crm_20100127.pdf)). One way to overcome this interpretation is by amending the claim to recite a "non-transitory computer readable storage medium" which would explicitly limit the medium to only non-transitory embodiments. *See Id.*

### **Claims 15-20 and 23**

Claim 15 recites a system comprising a plurality of different modules. The term “system” is not equivalent to a "machine" and therefore does immediately render a claim statutory. For example, a claim to a system comprising nothing more than software elements is directed to only software and is therefore not statutory. Only if one of the claimed elements of the system can be interpreted as hardware can the system be interpreted as a machine under § 101.

Applicant’s claim 15 recites a system comprising a plurality of modules. Applicant's specification discloses that the modules may be implemented as purely software [pg. 8, ll. 14-21]. Because the modules may be implemented as purely software, the claimed “system” is nothing more than an arrangement of software code. Therefore, the claimed system is directed only to software which is not statutory under § 101.

## **V. CONCLUSION**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOHM CHANKONG whose telephone number is (571)272-3942. The examiner can normally be reached on Monday to Friday [10 am - 6 pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on (571)272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DOHM CHANKONG/  
Primary Examiner, Art Unit 2452